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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,690	12/27/2001	Stefaan De Cnodder	Q67666	9306

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SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

SOL, ANTHONY M

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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01/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/026,690

Applicant(s)

DE CNODDER ET AL.

Examiner

Anthony Sol

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: the arguments have been fully considered but they are not persuasive. The applicant argues (p.7, lines 5-7 of the Remarks) that Troxel does not describe what happens if there are enough tokens in the bucket and presumably, the packets are assumed to be conforming and thus passed through without marking. The examiner respectfully disagree with the interpretation that the packets are not marked. Troxel discloses that packets which were "conforming" in the first stage token buckets 60 are again tested using second stage token bucket 68 (see col. 17, lines 10-15). Troxel further discloses various modes of policing including one that allows a packet and "mark" it conforming. (col. 18, line 7). Troxel still further discloses a message "marked" conforming if the counter is not below the number of tokens required for passing said message (col. 2, lines 61-67). As to the assertion that the applicant makes that the examiner had agreed that the priority upgrade outlet of fig. 10 is a color-aware mode, the examiner does not concede. In the FOA, p. 6, lines 11-12 referred to by the applicant, the examiner wrote "(color-aware mode)" to indicate that the non-conforming status was obtained in the scenario depicted in col. 16, lines 56-59 in reference to fig. 9, which is the same as the first stage of fig. 10. As for the non-conforming packet that enters stage 2, now it gets upgraded, and it does so in the so called color-blind mode as defined by the applicant's specification on p. 6, lines 26-29, where it states, "The metering part detects this rise to the actual filling level over the respective threshold values and in order to make use of the reserved bandwidth does not consider the colour of the incoming packets anymore." In other words, the mode is in "colour blind" mode as disclosed by the applicant's specification p. 7, lines 14-17. In summary, the examiner interprets the disclosure of Troxel in relation to fig. 10's stage 2, as depicting a "colour blind" mode where the packet is marked "conforming" so as to teach determining the packet marking of each of the packets based on the actual value of the traffic reservation parameter when the actual value exceeds the threshold value for the traffic reservation parameter, as set forth by claim 1.